HIGH COURT OF UTTARANCHAL AT NAINITAL

(Court's order whether the case is or not approved for reporting.)

(Chapter VIII Rule 32 (2)(b)

Description of the case.

W.P. No. 1349/05 (S/S)

Bhuwan Singh Bisht
Vs
D.M. Nainital

Approved for reporting.

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Not approved for reporting

Date of decision 29/9/2006

Initial of Judge

HIGH COURT OF UTTARANCHAL AT NAINITAL

Writ Petition No. 1349 of 2005 (SS)

Bhawan Singh Bisht s/o Late Kheem Singh Bisht
Village Jhargaon, Tehsil Dhari,
District Nainital ..... Petitioner

Versus

1. District Magistrate, Nainital
2. Sub Divisional Magistrate, Dhari, Nainital
3. The Commissioner, Kumaon Mandal,
   Nainital ..... Respondents

Sri S. Dhulia, Sr. Advocate for the petitioner
Standing counsel for the respondents.

Dated: March 29, 2006

Hon'ble Rajesh Tandon, J.

Heard Sri Sudhansu Dhulia, Sr. Advocate assisted by Ms. Puja Banga counsel for the petitioner and Standing counsel for the respondents.

By the present writ petition, the petitioner has prayed for a writ of certiorari quashing the orders dated 12.8.2005 passed by the District Magistrate, Nainital rejecting the representation of the petitioner.

According to the petitioner, he is a seasonal collection Amin on 27.4.1994 and continuously served till 31.8.1998. The petitioner worked with artificial breaks from 27.4.94- 31.8.98 and thereafter served as a regular seasonal collection Amin from 1998 upto 1999 with no breaks and completed 365 days in a calendar year. The petitioner along with others have filed a

Writ petition No. 36942 of 1997 Ramnath and others vs. State of U.P. in that writ petition respondents were directed that whenever the respondents fill up the vacancies on regular basis under 35 percent reserved category as provided under the rules, the claim of the petitioner shall also be considered and if the respondents require services of the seasonal collection Amin, instead of adopting pick and choose method they shall given the chance to seasonal collection Amins strictly in accordance with the seniority.

The petitioner has submitted that thereafter instead of regularising the service of the petitioner he was illegally removed from the service. Thereafter the petitioner filed a writ petition No.498 of 2004 for appointment and regularization as seasonal collection Amin, which was allowed on 13.6.2005 with a direction to the respondents to consider the petitioner for regularization in accordance with law within a period of three months. In pursuance of the Courts order the petitioner made a representation to the respondents to consider the appointment and regularization of the petitioner to the post of a seasonal collection Amin in Nainital District.

In pursuance of that order the petitioner has made a representation to the respondents to consider the appointment and regularization of the petitioner to the post of a Seasonal Collection Amin. The petitioner has submitted that the respondents did not comply the order of the Court and rejected the representation on the frivolous grounds vide order dated 12.8.2005, against which the petitioner has filed the present writ petition.

The respondents have filed counter affidavit and has stated that the recovery made by the petitioner in the last 4

Fasals was less than 59% of the prescribed target and, therefore, he was not given the fresh engagement after 31.8.199.

The respondents have not disputed that the petitioner was engaged as Seasonal Collection Amin since 1994 to 1999. The main contention of the respondents for not continuing the service of the petitioner as Collection Amin is that the petitioner has not fulfilled the target allotted to the collection amins and his target was less than 59%. The petitioner has filed copies of statements of performance of Collection Amins in Tehsil Dhari issued by the Tehsildar Dhari. As per statements annexure-6 to the writ petition, petitioner Bhagwan Singh gave performance of recovery to the extent of 139% till 30.9.1996. Other Collection Amins shown in the statement gave performance less than the petitioner. According to this statement the following was the recovery percentage of the Collection Amins in Dhari Tehsil of District Nainital till 30.9.1996:

1.	Bhagwan Singh Bhist	139%
2.	Kewal Chandra Pandey	75%
3.	Ram Nath	54%
4.	Bhuwan Chandra Bhatt	60.5%
5.	Ramesh Chandra	52%
6.	Rajendra Singh	51%
7.	Leeladhar	60%
8.	Bhupal Singh	50%
9.	Vishan Singh	49%

In the next statement the performance of Collection Amins shown for 11/59 to 3/96 and the petitioner gave performance of 111%. Only one person namely Kailash Pandey has given higher percentage than the petitioner i.e. 135%. Further in the next quarter the petitioner gave performance of

54% which is much higher than all other Collection Amins. These statements shows that the performance of the petitioner was much better than his other colleagues. Along with his Rejoinder Affidavit petitioner has filed copy of the representation dated 20.8.2005 addressed to the District Magistrate, Nainital. The petitioner has alleged that his performance has not been correctly shown by the respondents and he was terminated from the service illegally.

The alleged order of Board of Revenue dated 25.2.1995 on the basis of which the service of the petitioner was terminated by the respondents has been issued keeping in view the performance of the Seasonal Collection Amins in the plain district of Uttar Pradesh. No norms were fixed for hill districts of Uttaranchal. In his representation dated 20.8.2005 the petitioner has clearly mentioned that he was allotted Goniyaro and Padampur region of Tehsil Dhari which is a very difficult terrine. Even the peon posted with him on duty had denied to go to that area. The respondents in their counter affidavit have not asserted that Collection Amins engaged by them in lieu of the petitioner were performing much better than the petitioner.

This Court in Writ Petition No. 4527 of 2001 (SS) Inder Singh & others vs. State of Uttaranchal decided on 9.4.2004 has held as under:

"It appears that the decision in the hills is different from that in plains of U.P. The Patwari was a revenue official equivalent to Lekhpoal but his power were wider since they include police power. Hence, the decision of this court relating to Seasonal Collection Amin to the plains areas of U.P. cannot be applicable to the hill areas. In the hill areas, as alleged in the petition, the seasonal Collection Amins are doing exactly

the same work as the Collection Amin, unlike to the plains. Hence, there is nothing "Seasonal" about the work of Seasonal Collection Amins, In fact the District Magistrate, Nainital has been repeatedly writing to the higher authorities in this connection vide annexures-1 and 2 to the writ petition. Similarly, the seasonal Collection peons are doing the same work as regular Collection Peons. **********

An attempt was made by the learned Standing Counsel to defend the inaction on the part of the respondents by submitting that the performance of the petitioners was not satisfactory and therefore, their cases for regularization were not considered. Nothing has been brought on record to justify the plea and I am not inclined to accept that the petitioners were made to work for such a long period even tough their work or conduct was unsatisfactory. The Stand taken up by the respondents is nothing but only a false pretext to deprive the petitioners from getting the benefit of the notification dated 23.10.1992 under the relevant rules of 1974 and thereby to deny them equality of law in violation of the mandate of Articles 14 and 16 of the Constitution of India."

The petitioner has submitted that he is handicapped person and accordingly the reservation policy of the Government he is entitled to be regularised from the quota of disabled person. Thus the petitioner is entitled to be considered for the post of Amin on the basis of performance given by him during his tenure of working as Seasonal Collection Amin.

The learned counsel for the petitioner has submitted that the Government of Uttaranchal recently has created so many post of Amins in the State of Uttaranchal, which will be filled

from the candidates who has worked as Seasonal Collection Amin.

In view of above, a writ of certiorari is issued quashing the order dated 12.8.2005 passed by the respondent no.1. Further a writ of mandamus is issued directing the respondents to consider the petitioner for his regularisation as Collection Amin towards the vacant post within three months after obtaining certified copy of this order. Pending consideration he shall be given preference for work as Seasonal Collection Amin as he was doing earlier, if work is available in the Tehsil concerned.

Accordingly, the writ petition is allowed. No order as to costs.

Dated: 29.3.2006 **Rajesh Tandon, J.**

*Dhyani